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was indispensable to a recovery, did not state a case for discovery and relief in equity.

[Ed. Note.—For cases in point, see vol. 16, Cent. Dig. Discovery, § 21.]

2. Equity—Jurisdiction of Facts—Proof.—Where a bill in equity alleged proper jurisdictional facts which were not proved, the bill should be dismissed.

[Ed. Note.—For cases in point, see vol. 19, Cent. Dig. Equity, § 827.]

VIRGINIA IRON, COAL & COKE CO. *v.* KISER.

Sept. 15, 1906.

[54 S. E. 889.]

1. Appeal and Error—Review—Harmless Error—Continuance.—

A judgment will not be reversed for the denial of a continuance on the ground of the absence of one who was of counsel for defendant, where it does not appear that defendant's counsel who tried the case made any mistakes or were guilty of mismanagement.

[Ed. Note.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, § 4121.]

2. Master and Servant—Injuries to Servant—Dangerous Places—Mining.—The leaving of a board 18 or 20 inches long and about an inch thick at one end and cut down to an edge at the other end, in the entry of a mine, was not negligence, though it got upon a track running through the entry and derailed a car, whereby a servant was injured, as one of ordinary prudence could not have foreseen that the board might naturally and probably get on the track and cause a derailment.

3. Same—Evidence—Sufficiency.—In an action for the death of a miner who was found crushed beneath rock which had fallen from the roof of a chamber in the mine, evidence considered, and held insufficient to show that the accident was due to any negligence on the part of the master.

4. Same—Burden of Proof.—In an action for injuries to a servant, it is not sufficient that the evidence is consistent equally with the existence or nonexistence of negligence on the part of the master, but the negligence must be affirmatively shown by preponderating proof.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 950-955.]